

# DEPARTMENT OF NATURAL RESOURCES

## Division of Colorado Ground Water Resources Commission

### 2 CCR 402-3

## RULES OF PROCEDURE FOR ALL ADJUDICATORY RULEMAKINGS AND HEARINGS BEFORE THE COLORADO GROUND WATER COMMISSION

### 2 CCR 402-3

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

#### **Rule 1 – Authority**

~~This regulation is~~ These Rules are adopted pursuant to the authority granted to the Ground Water Commission in ~~section~~ § 37-90-111(1)(h), C.R.S. and ~~is~~ are intended to be consistent with the requirements of the State Administrative Procedure Act, ~~section~~ §§ 24-4-101 et seq. (the “APA”), C.R.S. ~~(the “APA”)~~ and the Colorado Ground Water Management Act, ~~sections~~ (the “Management Act”), §§ 37-90-101 et seq. (the “Act”), C.R.S.

#### **Rule 2 – Scope and Purpose**

- A. ~~–~~ These regulations Rules shall govern the procedure to be followed by ~~parties~~ Parties in ~~rule-making~~ rulemaking and adjudicatory hearings held by the Colorado Ground Water Commission, hereinafter referred to as the “Commission.”
- B. ~~–~~ These rules of procedure Rules are intended to establish procedures to assure that all hearings held by the Commission are conducted in a fair and impartial manner, to assure that all ~~parties~~ Parties to proceedings under the Colorado Ground Water Management Act are accorded due process of law, and to provide the Commission with all relevant facts and information pertinent to decision making. These rules shall be construed to carry out these purposes.
- C. ~~–~~ These regulations Rules do not apply to interpretive rulings, guidelines or general statements of policy, which are not meant to be binding.
- ~~D.~~ D. These Rules are promulgated pursuant to §§ 37-90-111(1)(h), 37-90-113, and 24-4-103, C.R.S.

#### **Rule 3 Applicability**

- A. These Rules apply to rulemakings, adjudicatory proceedings, declaratory orders, reconsideration of rulemaking decisions, and reconsideration of adjudicatory proceedings before the Commission. Adjudicatory proceedings include, but are not limited to, the granting, renewal, denial, revocation, suspension, annulment, limitation or modification of licenses or permits, applications for water right permits, changes in water right permits, applications for replacement plans, and applications for determinations of water rights.
- A.B. Except when necessary to comply with applicable statutes, the Commission may waive the requirements of these regulations Rules by timely written notice to all Interested Persons, Agencies, and Parties whenever it is determined that strict adherence to the rules will not promote fairness ~~or~~ and impartiality. In any such instance, appropriate justification shall be provided to all ~~interested persons and parties.~~ Interested Persons, Agencies, and Parties.
- ~~E. These~~ C. In the event of a conflict between these ~~rules of procedure are promulgated pursuant to sections 37-90-113, and 24-4-103, C.R.S.~~

### **Rule 3—Applicability—**

the APA, the Management Act or statutes, the statutes shall prevail. The provisions of the State Administrative Procedure Act, (also known as the A.P.A.) section 24-4-101, et seq., C.R.S., APA generally apply to all hearings held by the Commission. Specifically, the provisions of section § 24-4-103, C.R.S., shall apply to all rulemaking hearings, the provisions of § 24-4-104, C.R.S., shall apply to all decisions regarding the grant, renewal, denial, revocation, suspension, annulment, limitation or modification of Licenses (permits), and the provisions of section § 24-4-105, C.R.S., shall apply to all adjudicatory hearings Adjudicatory Proceedings and petitions for declaratory orders unless such provisions are inconsistent with the specific provisions of the Ground Water Management Act, in which case the Ground Water Management Act those statutory provisions shall control.—

### **Rule 4—Hearing Procedures for Rule-Making— Definitions**

A. The—

A. “Adjudication” - the procedure used by the Commission shall conduct all rulemaking proceedings for the formulation, amendment, or repeal of an order; including orders regarding licensing and permitting under §§ 24-4-104 and 24-4-102(2), C.R.S.

B. “Adjudicatory Proceeding”: - Adjudicatory Proceedings include notice, prehearing procedures and hearings which are required or allowed by law in order to determine past and future rights and obligations of persons or agencies, including persons or agencies aggrieved by an administrative action of the Commission, including all matters contemplated under the Commission’s Rules and Regulations for the Management and Control of Designated Ground Water, 2 CCR 410-1 other than rulemaking. Adjudicatory Proceedings are governed by the procedures in Rules 9, 10 and 11 of these rules.

C. “The APA” – The State Administrative Procedures Act, § 24-4-101 et seq., C.R.S., as may be amended.

D. “Agency” – any board, bureau, commission, department, institution, division, section, or officer of the state, except those in the legislative branch or the judicial branch.

E. “Commission” – The Colorado Ground Water Commission as defined under § 37-90-104, C.R.S. as may be amended. The address of the Commission is:

Colorado Ground Water Commission  
c/o Colorado Division of Water Resources  
1313 Sherman St., Room 821  
Denver, CO 80203

F. “Determination Act” – The Water Rights Determination and Administration Act of 1969.

G. “Executive Director of the Commission” – The State Engineer as defined in § 37-90-105(6), C.R.S., as may be amended.

H. “Ex parte Communication” – An oral or written communication regarding a proceeding where the communication is between the Commission or Hearing Officer and a Party to the proceeding that is not on the public record; is not authorized by other specific provision of law or order of the Commission; and, with respect to which reasonable prior notice to all Parties is not given. Communications solely inquiring as to the process of the proceeding that are not seeking any procedural or substantive relief, nor pertaining to any substantive issues, are not included in Ex parte Communication.

I. “File or Filed”: Received in the office of the Colorado Division of Water Resources and date-stamped by staff as received on that day or, when filed by electronic mail for rulemakings or Adjudications as provided herein:

1. Electronic Mail - Service by electronic mail shall be complete when the Commission or Office of the State Engineer receives an electronic mail containing an attached, signed version of the

document to be filed. Received shall mean the date on which the electronic mail is delivered to an inbox. When any Person, Interested Person, Agency or Party files by electronic mail, it shall be considered an agreement to be served by electronic mail. The filer is responsible for furnishing one or more electronic notification addresses at which the electronic filer agrees to accept service and shall immediately provide the Commission and all Parties with any change to the electronic filer's notification address. Special filing arrangements may be made on a case-by-case basis as needed.

2. All filings for Rulemaking and Adjudicatory Proceedings under these Rules shall be made by electronic mail.

3. Exception to Electronic Filing – Any person or Agency may request approval by the Executive Director or his designee to file documents in paper copy format if they are unable for any reason to comply with the electronic filing requirements. Pro se Parties may file documents via US mail if electronic filing is not available.

J. “Hearing Officer” – an agent designated by the Commission pursuant to §37-90-113(2).

K. “Initial Decision” – a decision made by the Commission’s designated Hearing Officer which will become the final action of the Commission unless reviewed by the Commission. § 24-4-102(6), C.R.S.

L. “Interested Person” - any Person who may be aggrieved by an action of the Commission or its Staff. §24-4-102(6.2), C.R.S.

M. “License” – the whole or any part of any Commission or Division of Water Resources permit, certificate, registration, charter, membership, or statutory exemption. § 24-4-102(7), C.R.S.

N. “The Management Act” - The Ground Water Management Act of 1965, § 37-90-101 *et seq.*, C.R.S., as may be amended.

O. “Party” – any person or agency named or admitted as a Party, or properly seeking and entitled as of right to be admitted as a Party in a proceeding before the Commission, subject to the provisions of these Rules.

P. “Person” – an individual, limited liability company, partnership, corporation, association, county, or a public or private organization other than an agency.

Q. “Rules” – these Rules of Procedure For All Hearings Before The Colorado Ground Water Commission

R. “Rulemaking Proceedings” – Rulemaking Proceedings are the notice and hearing activities required by law for the Commission to adopt rules, as authorized by the Management Act, the APA or other specific authority provided to the Commission, that are of general applicability and future effect implementing, interpreting, or declaring law or policy, which are intended to be binding. They include adoption of whole generic rules, or deletion of, or revisions or modifications to, existing rules of the Commission. Rulemaking Proceedings are governed by the procedures in Rules 6 and 7 of these rules.

S. “State Engineer” – the person appointed by the governor pursuant to section 13 of article XII of the state constitution having the general duties set forth in §§ 37-80-101, *et seq.*, C.R.S., as well as duties under the Determination Act, the Management Act, and other provisions of Title 35 and 37 of the Colorado Revised Statutes. The address of the State Engineer is:

Colorado Division of Water Resources  
1313 Sherman St., Room 821  
Denver, CO 80203

T. “Stipulation” – an agreement or concession as to facts or the law made by the Parties in a proceeding before the Commission or Hearing Officer.

## Rule 5      Alternative Means of Dispute Resolution

### A.      For the purposes of Rule 5, the following definitions apply:

1.      "Alternative means of dispute resolution" means any binding dispute resolution procedure that is used to resolve issues in controversy, including, but not limited to, arbitration, fact finding, mini trials, and use of ombudsman, or any combination thereof;
2.      "Dispute resolution proceeding" means any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a Neutral is appointed and some or all of the Parties participate;
3.      "In confidence" means, with respect to information, that the information is provided—
  - a.      with the expressed intent of the source that it not be disclosed; or
  - b.      under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed;
4.      "Issue in controversy" means an issue which is material to a decision concerning an action of the Commission or its Staff and with which there is disagreement between the Parties, Agency or Person who would be substantially affected by the decision.
5.      "Neutral" means an individual who, with respect to an issue in controversy, functions specifically to aid the Parties in resolving the controversy. A Neutral may be a permanent or temporary officer or employee of the State of Colorado or any other individual who is acceptable to the Parties to a dispute resolution proceeding. The Neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all Parties and all Parties agree that the Neutral may serve. A Neutral who serves as a conciliator, facilitator, or mediator serves at the will of the Parties.

### B.      General authority

1.      The Commission or Hearing Officer may approve the use of a dispute resolution proceeding for the resolution of any issue in controversy in an Adjudicatory Proceeding, when all Parties to such Adjudicatory Proceeding agree to such a process. The provisions herein regarding alternative means of dispute resolution are strictly voluntary and neither applicants nor objectors may be forced to participate.
2.      The Commission or Hearing Officer shall consider not using a dispute resolution proceeding if any of the following apply:
  - a.      a definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;
  - b.      the matter involves or may bear upon significant questions of state government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the Commission;
  - c.      maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

d. the matter significantly affects persons. Agencies, or organizations who are not Parties to the proceeding;

e. a full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record.

3. Alternative means of dispute resolution authorized under this subchapter are strictly voluntary procedures which supplement rather than limit other available dispute resolution techniques.

C. Confidentiality - Except as provided herein, a Neutral in a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the neutral, unless one of the following factors apply:

1. all Parties to the dispute resolution proceeding and the Neutral consent in writing, and, if the dispute resolution communication was provided by a non-Party participant, that participant also consents in writing;

2. the dispute resolution communication has already been made public;

3. the dispute resolution communication is required by statute to be made public, but a Neutral should make such communication public only if no other person is reasonably available to disclose the communication; or

4. a court determines that such testimony or disclosure is necessary;

5. A Party to a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication, unless one of the following factors apply:

a. the communication was prepared by the Party seeking disclosure;

b. all Parties to the dispute resolution proceeding consent in writing;

c. the dispute resolution communication has already been made public;

d. the dispute resolution communication is required by statute to be made public;

e. a court determines that such testimony or disclosure is necessary.

6. Any dispute resolution communication that is disclosed in violation of these rules shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.

7. The Parties may agree in writing to alternative confidential procedures for disclosures by a Neutral. Any such agreement shall be provided to the Neutral before the commencement of the dispute resolution proceeding.

8. If a demand for disclosure by way of discovery request or other legal process is made upon a Neutral regarding a dispute resolution communication, the Neutral shall make reasonable efforts to notify the Parties and any affected non-Party participants of the demand. Any Party or affected non-Party participant who receives such notice and within 15 calendar days does not offer to defend a refusal of the Neutral to disclose the

requested information shall have deemed to have waived any objection to such disclosure.

9. Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.

10. A decision by the Commission to use or not to use a dispute resolution proceeding under this subchapter shall be committed to the discretion of the Commission or its appointed Hearing Officer and shall not be subject to judicial review.

D. Effect. A decision by a Neutral under this Rule 5 shall be submitted to the Commission at their regularly scheduled quarterly meeting. Upon acceptance of the Commission, the Neutral's decision shall be adopted as the final decision of the Commission and enforceable as a decision of the Commission.

### Rule 6 Hearing Procedures for Rulemaking

A. All rulemaking proceedings shall be conducted by the Commission, however, the Commission may designate a Hearing Officer to conduct fact finding hearings and make recommendations to be filed with the Commission for final consideration and adoption. Whenever the Commission contemplates rulemaking, public announcement may be made at such time and in such manner as ~~they determine, and opportunity may be afforded interested persons~~ the Commission may determine. The Commission shall establish a representative group of participants with an interest in the subject of the rule-making to submit views or otherwise participate informally in conferences ~~with the Commission, or their staff~~ on the proposals under consideration, ~~or to participate in public rule-making proceedings on the proposed rules.~~ It is within the discretion of the Commission to determine ~~if the duration and when extent to which~~ such informal proceedings should occur. § 24-4-103(2), C.R.S.

B. ~~Any interested person~~ Person or Agency shall have the right to petition the Commission in writing for the issuance, amendment, or repeal of a rule. Such petition shall be open to public inspection. Action on such petition shall be within the discretion of the Commission, but when they undertake rulemaking on any matter, all related petitions for the issuance, amendment or repeal of rules on such matter, shall be considered and acted upon in the same proceeding. § 24-4-103(7), C.R.S.

C. ~~Petitions for rulemaking shall be filed by electronic mail or pursuant to the paper format filing exception pursuant to Rule 4.1.3.~~

D. Petitions for rulemaking shall include the following information:

1. ~~1.~~ Identification of the person or persons or Agency requesting rulemaking and the nature of the requests; ~~–~~
2. ~~2.~~ The language of the proposed rule;
3. ~~3.~~ A statement of the Commission's authority to promulgate the rule;
4. ~~4.~~ A concise general statement of the rule's basis and purpose. If the rule involves technological or scientific issues, this statement must include a detailed, analytical statement of the scientific or technological rationale justifying the proposed rule. ~~–~~

~~D.~~  
E. Notice.

1. ~~1.~~ Official After the Commission determines to proceed with formal rulemaking, official notice of proposed rulemaking proceedings shall be filed with the secretary of state in sufficient time for publication in the Colorado Register. §§ 24-4-103(3)(a) and (11).
2. ~~2.~~ In accordance with the requirements of section 24-4-103(2.5), C.R.S., at At the time of

filing a notice of proposed rule-making with the secretary of state as the secretary may require, the Commission shall submit a draft of the proposed rule or the proposed amendment to an existing rule and a statement, in plain language, concerning the subject matter or purpose of the proposed rule or amendment, and any proposed rule to cost-benefit analysis prepared to the office of the executive director in the Department of Regulatory Agencies. The provisions of § 24-4-103(2.5) shall apply.

3. ~~3.~~—Notice of proposed rulemaking shall be published in the Colorado Register and shall state the time, place, and nature of public rulemaking proceedings, the authority under which the rule is proposed, and either the terms or the substance of the proposed rule or a description of the subjects and issues involved.—§ 24-4-103(3)(a), C.R.S. Publication of the notice in the Colorado Register shall be in accordance with § 24-4-103(11)(g).
4. ~~4.~~—With due regard for the number and complexity of the proposed rules, the Commission shall establish the date for the public rulemaking proceedings. The date set for the proceedings shall not be less than twenty (20) days after publication of notice as provided in this section. ~~Publication shall be in the Colorado Register, which shall be distributed pursuant to section 24-4-103(11)(h), C.R.S. and the Commission shall mail a copy of the notice to the petitioner, if any and as required by § 24-4-103(3)(a), C.R.S.~~
5. ~~5.~~—Public notice may contain requirements with respect to special procedures, including ~~party~~Party status, prehearing conferences and requirements for written testimony, which the Commission deems appropriate to any particular rulemaking hearing.—
6. ~~6.~~—An amended notice may be issued by the Commission at any time prior to the hearing without necessitating a continuance of the hearing date, provided the ~~original notice is not substantially altered to the prejudice of any interested person.~~amendment is non-substantive. If an amendment is substantial and prejudicial, the hearing date shall be continued to an appropriate date as determined by the ~~state engineer~~Commission, and notice thereof shall be made in the same manner as the original notice.—
7. ~~7.~~—The Commission may continue a hearing to another date by issuing written notice to that effect at any time prior to the close of the record, or by announcement at the date, time and place of the original hearing.—

#### E.-F. Party Status

1. ~~1.~~—Status as a ~~party~~Party will be available to ~~interested persons~~Interested Persons and Agencies in rulemaking proceedings before the Commission, unless the Commission specifies otherwise in its notice of proposed rulemaking. Where an opportunity to obtain party status is provided, it ~~may~~shall be obtained in the manner prescribed in this section. Parties to rulemaking hearings shall have the rights specified in this section.—
2. ~~2.~~—If ~~party status~~Party Status is to be allowed, then any person or ~~agency~~Agency who is interested may become a party to rulemaking proceedings by filing an application for ~~party status~~Party Status. Applications for ~~party status~~Party Status shall be filed as stated in the notice of proposed rulemaking. Thereafter, applications to be made a ~~party~~Party shall only be granted if other ~~parties~~Parties will not be prejudiced thereby.—
3. ~~3.~~—Applications for ~~party status~~Party Status shall set forth the name, U.S. mail address, telephone number and e-mail address of the ~~person, persons~~Person, Persons or ~~agency~~Agency seeking ~~party status~~Party Status. The application shall also indicate the interest of the ~~person~~Person(s) or Agency in the proposed rules and a description of the general nature of the evidence to be presented by the proposed Party in the course of the proceedings.—
4. ~~4.~~—For a hearing where ~~party status~~Party Status is available, it shall be freely granted by the Commission. Party status may be granted prior to or at the prehearing conference or other appropriate time prior to the hearing.—

~~5.~~ 5.—The staff of the Commission shall automatically be a ~~party~~Party to rulemaking proceedings before the Commission ~~when party status is allowed to.~~

~~5-6.~~ 5-6. For the purpose of service of any documents upon a Party other persons than the staff of the Commission, delivery by U.S. mail or by e-mail to the addresses provided in a Party's application for Party Status shall constitute service as of the date mailed or e-mailed. A Party shall promptly serve upon the Commission and all other Parties notice of any change in the Party's U.S. mail address or e-mail address for the purpose of service.

~~F.~~

G. Prehearing Procedures for Rulemaking ~~Conference~~

1. 1.—These prehearing procedures provide a process by which the issues related to a proposed rule are raised and discussed, and presented to the Commission or its designated Hearing Officer for decision in an efficient manner if they cannot be resolved prior to the prehearing conference. It is the strong desire of the Commission that the Parties try to resolve as many issues as possible by negotiation prior to the prehearing conference. Any Person or Agency may attend the prehearing conference but only Parties may participate.

2. The Commission may specify in the notice of proposed rulemaking that a prehearing conference will be held. Any such conference shall be held not less than five ~~(5)~~ days in advance of the hearing, unless the Commission, ~~for good cause~~ specifies otherwise.—

2.—

3. At any prehearing conference each ~~applicant for party status~~Party shall present to the Commission or designated Hearing Officer and to every other ~~person~~Person, Agency or ~~party~~Party in attendance a prehearing statement that shall contain the following:—

a.— A specific statement of the factual and legal claims it asserts;

b.— Copies of all exhibits it will introduce at the hearing;

c.— A list of witnesses it will call and a brief summary of their testimony;

d.— Specific language proposed for the rule, where appropriate, and a proposed statement of the basis and purpose for the rule.

e.— All written testimony it will offer into evidence at the hearing.—

~~f.—4.~~ f.—4. The object of the prehearing rulemaking conference may include the formulation of stipulations or orders respecting the issues to be raised, and witnesses and exhibits to be presented by the ~~parties~~Parties (where applicable) or ~~interested persons~~Interested Persons. The ~~parties~~Parties or ~~interested persons~~Interested Persons shall make known at the prehearing rulemaking

conference any objections to the procedures or evidence that may be raised at the hearing. \_

Stipulations may be made at the prehearing conference to reflect any matters which have been agreed to or admitted by the ~~parties~~Parties or ~~interested persons~~Interested Persons. A prehearing order shall be prepared by the Commission, its Hearing Officer or, at its direction, by any person, Agency, or party, based upon the prehearing conference, which shall reflect any rulings made with respect to procedures to be followed at the hearing, or any other matters.— The prehearing order shall not bar any further evidentiary objections at the hearing.

~~G.—5.~~ G.—5. Concerning motions, the Commission or Hearing Officer may require as part of the prehearing rulemaking conference or otherwise, advance submittal of all motions or requests for rulings that such ~~person~~Person or ~~party~~Party intends to make with respect to the proposed rulemaking. \_ These shall include motions regarding procedures, the scope and nature of the proceedings, or any other matter that requires a determination by the Commission prior to final agency action based on the record, or any matter that may



reasonably be disposed of prior to receiving testimony or other evidence.

- H. -      The Commission or Hearing Officer shall issue subpoenas without discrimination between public and private persons, Agencies, or ~~parties~~Parties. A subpoena shall be served by the person, Agency, or party requesting its issuance in the same manner as a subpoena issued by a district court. Upon failure of any witness to comply with such subpoena, the Commission or Hearing Officer may petition any district court, setting forth service of the subpoena and stating that due notice was given to the witness of the time and place of attendance. The district court, after hearing evidence in support of or contrary to the petition, may enter an order as in other civil actions compelling the witness to attend and testify or produce books, records, or other evidence under penalty of punishment for contempt in case of contumacious failure to comply with the order of court. A witness shall be entitled to the fees and mileage provided for a witness in ~~section~~§§ 13-33-102 and 13-33-103, C.R.S., to be paid by the person, Agency, or party requesting issuance of the subpoena. § 24-4-103(14), C.R.S.
- I. -      The Commission or Hearing Officer may, on their or his or her own accord or upon the motion of any Party for good cause shown, take depositions or have depositions taken, and fix the time and place for them to be held.

J.      The conduct of rulemaking hearings shall be as follows:

1.      ~~4.~~ 4. The Commission shall hold a public hearing before promulgating any rule or regulation. At such hearing, the staff of the Commission, other ~~parties and interested persons~~Parties, Agencies, and Interested Persons shall be afforded the opportunity to submit written data, views, or arguments, and to present the same orally unless the Commission deems it unnecessary.
2.      ~~2.~~ 2. All witnesses shall be subject to cross-examination by or on behalf of persons or Agencies who have obtained party status to the proceedings by the Commission and staff for the Commission.
3.      ~~3.~~ 3. The Chairman for the Commission (or its designated Hearing Officer) shall, in addition to the authority specified elsewhere, have authority to: administer oaths and affirmations; sign and issue subpoenas; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for the filing of appropriate documents; take depositions or have depositions taken; issue appropriate orders; issue appropriate orders which shall control the subsequent course of the proceedings and take any other action authorized by statute or agency rule consistent with the APA. -

~~4.~~ 4. The Commission ~~will make efforts to provide for and solicit the greatest possible public participation in rulemaking hearings.~~

4.      ~~5.~~ 5. The Commission or Hearing Officer may allow ~~parties~~Parties to submit evidence not previously submitted under prehearing conference procedures for good cause, such as where necessary for purposes of rebuttal. ~~testimony.~~
5.      ~~6.~~ 6. The Commission or Hearing Officer may permit ~~parties~~Parties to submit motions not previously submitted under prehearing conference procedures for good cause ~~shown~~but not later than five days prior to the hearing.
6.      ~~7.~~ 7. After receiving evidence presented during the hearing the Commission or Hearing Officer may allow or require ~~interested persons or parties~~Parties to present oral or written summations of the facts and law as it deems necessary. -

~~J.~~

7.      At any time the Commission or Hearing Officer may question any Party or witness participating in the hearing.
8.      All hearings shall be conducted in the following order unless otherwise directed by the Commission or Hearing Officer.

- a. Call to order and introductory remarks;
- b. Presentation of any Stipulations or agreements between the Parties;
- c. Opening statements by the petitioning Party;
- d. Opening statements by all other Parties;
- e. Presentation of case-in-chief by the petitioning Party;
- f. Presentations by all other Parties wishing to offer evidence, with the order of presentation to be determined by the Commission or presiding Hearing Officer;
- g. Rebuttal by the petitioning Party;
- h. Closing statement by petitioning Party;
- i. Closing statements by all other Parties.
- j. At the conclusion of any witness's testimony all other Parties may then cross-examine each witness. The order of the cross examination shall be determined by the Person conducting the hearing.
- k. All briefs and memoranda of law that Parties file shall be served on the Commission or Hearing Officer and all Parties no later than five days prior to the hearing unless otherwise specified.

K. Final Agency Action and Post-Hearing Procedures for Rulemaking

~~1.~~

1. After the conclusion of the last public hearing, the Commission shall prepare an initial ruling as to any rules proposed for adoption.

~~1.2.~~ The Commission shall consider all submissions entered into the record in adopting any rule ~~or regulation.~~ The rules ~~or regulations~~ promulgated shall be based on the record ~~and the.~~ The record shall consist of proposed rules, evidence, exhibits, other matters presented or considered, matters officially noticed, ruling on exceptions, any findings of fact and conclusions of law proposed by any party, and any written briefs filed.

~~2.~~ The

3. Within one hundred eighty (180) days after the last public hearing on a proposed rule, the Commission shall adopt a rule pursuant to these rulemaking procedures or terminate the proceeding by publication of a notice to that effect in the Colorado Register.

4. Any Party to the rulemaking may file written exceptions to the initial ruling within 21 days of the Commission's service of the initial ruling on all Parties. The Commission shall rule on any such exceptions prior to adopting any rule or terminating the proceeding.

5. Material Incorporated by Reference

- a. As provided in § 24-4-103(12.5)(a), C.R.S., the Commission may incorporate by reference in their rules, without publishing the incorporated material in rules as finally ~~all or any part of a code, standard, guideline or rule that has been adopted by an agency of the United States, the state of Colorado, or another state or adopted or published,~~ standards or

~~guidelines of any~~ by a nationally recognized agency, association or organization ~~or association.~~

~~3.—~~

b. The Commission shall maintain ~~certified copies of the complete text of material incorporated. These copies shall be a copy of the statute, code, standard, guideline, or rule readily available for public inspection at the Division of Water Resources during regular business hours. Certified copies, as well as a posting of the same on their website. The Commission shall provide certified copies of the material incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated shall be provided upon request and by reference through the source agency, association or organization. § 24-4-103(12.5)(b), C.R.S. Electronic versions may be substituted upon payment of statutory copying fees.~~ request.

~~4.—~~

c. References to any incorporated material shall identify the incorporated material by appropriate agency, organization, or association by ~~the~~ date, title and/or ~~citation~~ citations. The reference shall also state that the rule does not include later amendments to or editions of the incorporated material.—

~~5.—~~

d. The Commission shall include in any rule incorporating material by reference the fact that the ~~Commission~~ state engineer will provide information regarding how the incorporated material may be obtained or examined.—

6.— ~~After consideration of the relevant information presented, the Commission shall include as part of the rules or incorporate by reference in the rules adopted rules, a written and concise general statement of their basis and purpose. The written statement of the basis and purpose of a rule that involves scientific or technological issues shall include a detailed, analytical evaluation of the scientific or technological rationale justifying the rule.—~~

7.— ~~All rules promulgated adopted by the Commission shall first be submitted to the attorney general for his/her an opinion as to their constitutionality and legality. Any rule issued without being so submitted shall be void.~~

~~§ 24-4-103(8—)(b), C.R.S.~~

8. ~~All rules adopted by the Commission, including temporary or emergency rules, shall be submitted to the Office of Legislative Legal Services in the form and manner prescribed by the Committee on Legal Services. Any rule issued that is not submitted to the Office of Legislative Legal Services for review within 20 days after the date of the attorney general's opinion rendered thereon shall be void. The Commission shall revise promulgated rules to conform to any action taken by the general assembly. § 24-4-103(8)(d), C.R.S.~~

9. ~~Each rule adopted by the Commission, together with the attorney general's opinion rendered in connection therewith, shall be filed within ten (10) 20 days after adoption with the secretary of state for publication in the Colorado Register. Rules revised to conform to with action taken by the general assembly shall be filed with the secretary of state for publication in the Register register and in the Code code of Colorado Regulations. § 24-4-103(11)(d)(II), C.R.S.~~

9.—10. Any rule as finally adopted by the Commission shall become effective ~~twenty (20)~~ days after final publication as required by law or on such later date as is stated in the rule. Once a rule becomes effective the rulemaking process shall be deemed to have become final agency action for purposes of judicial review.— ~~§ 24-4-103(5), C.R.S.~~

~~10.—All rules adopted by the Commission, including temporary or emergency rules, shall be submitted to the Legislative Drafting Office in the form and manner prescribed by the Committee on Legal Services. Any rule issued that is not submitted to the Legislative Drafting Office within twenty (20) days after the date of the attorney general's opinion—~~

~~rendered thereon shall be void. The Commission shall revise their rules to conform to any action taken by the general assembly.~~

~~11.—~~ 11. Any Person or Agency adversely affected or aggrieved by the final agency action may commence an action for judicial review under § 24-4-106(4), C.R.S. within 35 days after the final agency action becomes effective.

~~12. The Commission shall maintain a copy of its currently effective rules, the current status of an official rule-making record for each published proposal for rules, all minutes of its actions upon proposed rules, and any attorney general's opinion rendered on adopted or proposed rules. This information shall be available for inspection by any person during regular office hours.~~

12.— The Commission shall make available to the public and shall deliver to anyone requesting it a copy of any rule of the agency then in effect or of any for which a notice of proposed rulemaking proceeding in which action rule-making has is pending. Upon request, copies of this information shall be certified. The Commission shall charge the statutory fees for supplying any such copy. been published in the Colorado Register. Such rule-making record shall be maintained by the Commission until all administrative and judicial review procedures have been completed. The rule-making record shall be available for public inspection and shall contain those items identified in § 24-4-103(8.1)(b), C.R.S.

~~13. The Commission shall maintain a docket listing the name, address, and telephone number of every person or party who has participated in a rulemaking proceeding by written or oral statement at any hearing concerning the rule(s).~~

~~14.—~~ M. Temporary or Emergency Rules.

Temporary or emergency rules may be adopted without compliance with the procedures prescribed in this section and with less than ~~twenty (20)~~ days notice (or where circumstances imperatively require, without notice) where the Commission finds ~~that the~~ immediate adoption of the rule is imperatively necessary to comply with a state or federal law or state or federal regulation for the preservation of public health, safety, or welfare, and compliance with the requirements of these rules would be contrary to the public interest, and the Commission makes such a finding on the record. Such findings and statement of the reasons for the action shall be published with the rule. A temporary or emergency rule shall become effective on adoption or on such later date as is stated in the rule, shall be published promptly, and shall have effect for not more than ~~three months from the 120 days after its~~ adoption ~~thereof~~ unless made permanent by compliance with this section. and with the APA. § 24-4-103(6)(a), C.R.S.

#### Rule 5—7 Reconsideration of a Rulemaking Action

Reconsideration of rulemaking action of the Commission may be sought by petition to the Commission in accordance with the provisions of Rule 6(B) pertaining to petitions for rulemaking. Any such petition shall be evaluated according to the established rules and policies of the Commission where applicable, and may be granted for good cause. Such a petition is not a prerequisite to the right of judicial review of the rule on which it is based and does not affect the time period for seeking judicial review of the rule. The decision to grant or deny such a petition is not itself final action subject to judicial review.

#### Rule 8 Hearing Officers

A. A.— Pursuant to ~~section~~ § 37-90-113(2), C.R.S., the Commission may ~~delegate to one or more members the responsibility to convene and designate an agent or Hearing Officer who is technically qualified to conduct adjudicatory and non-rulemaking or assist in such hearings under these rules to make an Initial Decision.~~ The Commission may also ~~appoint one or more persons to act as~~ designate an agent or Hearing Officer to conduct fact finding and present recommendations concerning designated groundwater basin determinations or rulemakings as required under §§ 37-90-106 & 37-90-111(h), C.R.S. Appeals of rulings of the agent or Hearing Officer designated by the Commission shall be reviewed at any regular or special Commission meeting at the location chosen by the Commission for that meeting.

~~A.B.~~ No person engaged in conducting a hearing or rulemaking shall be responsible to or subject to the supervision or direction of any officer and to make an initial decision on any matter, employee or agent engaged in the performance of investigatory or prosecuting functions for the Commission or Division of Water Resources. § 24-4-105(3) and (6), C.R.S.

~~B.—C.~~ Upon the filing in good faith by a Party of a timely filing by a party of a and sufficient affidavit of personal bias of the hearing officerHearing Officer, the hearing officerHearing Officer shall forthwith rule upon the allegations in such affidavit as part of the record in the case. A person designated to conduct a hearing may at any time withdraw if he deems himselfthey deem themselves disqualified or for any other good reason in which case another person or hearing officerHearing Officer may be assigned by the commissionCommission to continue the hearing, and they shall do so in such manner that no substantial prejudice to any partyParty results— therefrom. § 24-4-105(3), C.R.S.

~~D.~~ After complying with Rule 8.C.—If, if the partiesParties are dissatisfied with the person or persons appointed by the commissionCommission to conduct the hearing or act as hearing officerHearing Officer, they may request the commissionCommission to appoint another person or persons. Requests shall be accompanied by a detailed statement of the reasons justifying the request and shall include the identity of other partiesParties that support the request. The Commission shall have discretion in whether to grant or deny any request under this Rule 8.D.

## **Rule ~~6—9~~ Adjudicatory HearingsProcedures**

### A. A.—Scope and Applicability

1. In order to assure that all Parties to any formal Adjudicatory Proceeding are accorded due process of law, the provisions of § 24-4-105(1), C.R.S. shall apply.
2. In general, the Colorado Rules of Civil Procedure shall apply to all adjudicatory hearings. In complex litigation matters, the Commission or Hearing Officer may utilize Water Court Rule 11 of the Uniform Local Rules for All State Water Divisions.

### B. Prehearing Procedures

1. Prehearing procedures may be modified as required or approved by the Commission or Hearing Officer.
2. Disclosure and discovery
  - a. Any deadlines for the Parties' initial disclosures and expert disclosures shall be established by an order of the Commission or Hearing Officer.
  - a.b. Parties shall first attempt to utilize discovery through informal methods. When informal attempts fail, further discovery shall be conducted pursuant to the Colorado Rules of Civil Procedure. —Discovery shall be completed as ordered by the Commission or the hearing officer.—
  - b. —
  - c. The Commission or hearing officerHearing Officer may allow, upon the motion of any Party for good cause, the taking of depositions or have depositions taken, and fix the time and place for them to be held.
  - d. Discovery may be requested by any Party including the staff of the Commission. Discovery shall be granted where due process, fairness, and the establishment of an adequate record may be served thereby, and when the timely completion of the

proceedings will not be unduly delayed. Discovery timelines shall be set by the Commission or Hearing Officer in accordance with the Colorado Rules of Civil Procedure.

### 3. Subpoenas

~~b.a.~~ The Commission or Hearing Officer shall issue subpoenas in accordance with section § 24-4-105(5), C.R.S., on forms provided to the Commission or hearing officer Hearing Officer by the party Party requesting the subpoena.—

b. Subpoenas shall be issued without discrimination between Agencies and Persons by the Commission or Hearing Officer. A subpoena shall be served in the same manner as a subpoena issued by a district court. Upon failure of any witness to comply with such subpoena, the Commission or Hearing Officer may petition any district court, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena; in which event, the district court, after hearing evidence in support of or contrary to the petition, may enter an order as in other civil actions compelling the witness to attend and testify or produce books, records, or other evidence, under penalty of punishment for contempt in case of contumacious failure to comply with the order of the court and may award attorney fees under the Colorado rules of civil procedure. A witness shall be entitled to the fees and mileage provided for a witness in a court of record. § 24-4-105(5), C.—R.S.

### 4. Motions

The Commission or ~~hearing officer~~ Hearing Officer may require advance submittal of all motions or requests for rulings that any ~~party~~ Party intends to request at any hearing. These shall include but are not limited to all motions regarding procedures, the scope and nature of the proceedings, motions for summary judgment or determinations of questions of law, motions in limine, or any other matter that requires a determination ~~by the Commission or hearing officer~~ prior to final ~~agency~~ action based on the record.—

~~D.—~~

### 5. Prehearing Conference

a. A prehearing conference may be held if deemed useful by the Commission or ~~the hearing officer assigned to the case~~ Hearing Officer. Parties may also request a prehearing conference in writing at least ~~twenty (20)~~ days before a scheduled hearing in writing. ~~—The scope of issues to be raised at the prehearing conference shall be determined by the Commission or Hearing Officer. Prehearing conferences shall be held in the office of the Division of Water Resources in Denver, Colorado, unless the Commission or Hearing Officer determines the conference should be held at some other location. The Commission or Hearing Officer may hold the prehearing conference by telephone (or other conferencing means) at their discretion for cost-saving purposes or for the convenience of the Parties.~~

b. The prehearing conference shall be for the purpose of facilitating the adjudication of issues to be determined at the hearing. ~~—The scope of issues to be raised at the prehearing conference shall be determined by the Chairman of the Commission or the hearing officer. —Prehearing conferences shall be held in the Commission office in Denver unless the Chairman of the Commission or the hearing officer determine the conference should be held at some other location. —The Commission or the hearing officer may hold prehearing conferences by telephone at their discretion for cost saving purposes or the convenience of the parties.—~~

E. ~~Prior to any prehearing conference or hearing all parties shall file a prehearing statement by the date ordered by the Commission or the hearing officer. Failure to file a prehearing statement or other such documents by any party as ordered may result in dismissal of that party's claims if the Commission or hearing officer determines such failure results in undue prejudice to the other parties in the case. The prehearing statement shall include the~~

following:—

- ~~a) Specific statements of all factual and legal claims asserted by the party.—~~
- ~~b) A list of facts the party believes to be undisputed between the parties.—~~
- ~~c) A list of all exhibits the party plans to introduce at the hearing.—~~
- ~~d) A list of witnesses the party plans to call and a brief summary of their testimony.—~~

~~F.— The object~~ The purpose of the prehearing conference may include the formulation of stipulations or orders respecting relevant issues to be raised as well as witnesses and exhibits expected to be presented by the ~~parties (where applicable).~~ Parties.

~~c.~~ The parties Parties shall make known at the prehearing conference any objections to the procedures or evidence that may be raised at the hearing. Stipulations are encouraged and may be made at the prehearing conference to reflect any matters that have been agreed to or admitted by the parties or interested persons. Parties. A prehearing order may be prepared by the Commission or ~~the hearing officer~~ Hearing Officer and shall reflect any rulings made ~~by the Commission or hearing officer~~ with respect to procedures or any other matters to be followed at the hearing. The Commission or Hearing Officer may also direct a Party to prepare a draft of any order necessary.

~~G.—~~

#### 6. Prehearing Statement

~~a.~~ Prior to any prehearing conference or hearing the Commission or Hearing Officer may require all Parties to file a prehearing statement by the date ordered by the Commission or Hearing Officer. Failure to file a prehearing statement or other such documents by any Party as ordered may result in dismissal of that Party's claim if the Commission or Hearing Officer determines such failure results in undue prejudice to the other Parties in the case. If ordered, a signed stipulation between the Parties as to the disputed and undisputed facts may be substituted for the filing of a prehearing statement. Further, if ordered, use of Water Court Rule 11 procedures for the filing of pre-hearing documentation negates the requirement for the filing of prehearing statements.

~~b.~~ At a minimum, the prehearing statement shall include the following:

- ~~i.~~ Specific statements of all factual and legal claims asserted by the Party.
- ~~ii.~~ A list of facts the party believes to be undisputed between the Parties.
- ~~iii.~~ A list of all exhibits the Party plans to introduce at the hearing.
- ~~iv.~~ A list of witnesses the Party plans to call and a brief summary of their testimony.

#### C. Conduct of Hearings

~~1.~~ Unless otherwise agreed to by all Parties or unless ordered otherwise by the Commission or Hearing Officer due to extenuating circumstances, a hearing shall be held within 180 days after the filing of a request for such a hearing pursuant to § 37-90-113(2), C.R.S.

~~2.~~ Adjudicatory hearings heard by the Commission or ~~hearing officer~~ Hearing Officer shall be held within the boundaries of the designated ground water basin and ground water management district, if one exists, in which the water rights or well directly involved are situated/located, or at such other place as may be designated by the Commission or the Hearing Officer for the convenience of, and as agreed to by, the parties/Parties involved.— §§ 37-90-107(4) & 37-90-113, C.R.S.

~~H.— All adjudicatory hearings shall be held within one hundred eighty days after the filing of a request for such a hearing unless all parties to the hearing agree otherwise or, unless otherwise ordered by the Commission or hearing officer due to extenuating circumstances.—~~

~~I.—The Chairman of the Commission or hearing officer shall determine the order in which the parties shall present their cases, except that unless good cause is shown, the applicant, petitioner, or whichever party is determined to bear the burden of proof, shall proceed first.—~~

~~J.—The Colorado Rules of Evidence shall be adhered to the extent deemed appropriate by the Commission or hearing officer with respect to the submission of evidence in accordance with the provisions of section 24-4-105(7), C.R.S.—~~

~~K.—Parties who have obtained party status (including staff for the Commission)~~

~~3. In conducting hearings the Commission or Hearing Officer shall, in addition to the authority specified elsewhere, have authority to: Administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof and receive evidence; dispose of motions relating to the discovery and production of relevant documents and things for inspection, copying, or photographing; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for the filing of briefs and other documents; direct the parties to appear and confer to consider the simplification of the issues, admissions of fact or of documents to avoid unnecessary proof, and limitation of the number of expert witnesses; issue appropriate orders which shall control the subsequent course of the proceedings; dispose of motions to dismiss for lack of agency jurisdiction over the subject matter or parties or for any other ground; dispose of motions to amend or to dismiss without prejudice applications and other pleadings; dispose of motions to intervene, procedural requests, or similar matters; reprimand or exclude from the hearing any person for any improper or indecorous conduct in his presence; award attorney fees for abuses of discovery procedures or as otherwise provided under the Colorado rules of civil procedure; and take any other action authorized by agency rule consistent with this article or in accordance, to the extent practicable, with the procedure in the district courts. All parties to the proceeding shall also have the right to cross-examine witnesses who testify at the proceeding. In the event more than one person engages in the conduct of a hearing, such persons shall designate one of their number to perform such of the above functions as can best be performed by one person only, and thereafter such person only shall perform those functions which are assigned to him by the several persons conducting such hearing. § 24-4-105(4), C.R.S.~~

#### 4. Burden of Proof

a. Except as otherwise provided by statute, the proponent of the order shall have the burden of proof. § 24-4-105(7), C.R.S. “Order” means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) by the Commission in any matter other than rule-making. § 24-4-102(10), C.R.S. The Commission or Hearing Officer shall determine the proponent or proponents of orders as appropriate on a case-by-case basis based on the relief requested by the Parties. In making this determination and in holding the proponents of orders to their burdens of proof, the Commission or Hearing Officer shall consider the following general principles:

- i. Applicants for well permits, changes of water rights, replacement plans and/or artificial recharge plans shall have the initial burden of proof.
- ii. When a Party is requesting that the Commission or Hearing Officer review to either reverse or modify an initial Commission action, the Party seeking reversal or modification of the initial Commission action is the proponent of the order as to the requested relief.
- iii. When a Party is requesting any determination by the Commission or Hearing Officer not previously made by the Commission, the Party seeking the determination is the proponent of the order as to the requested determination.
- iv. If a proponent of an order presents initial evidence sufficient on its face to satisfy the burden of proof based on the preponderance of the evidence, the burden of proof may be shifted to the opposing Party or Parties to



present sufficient evidence to the contrary, but the ultimate burden of proof rests with the proponent of the order to prove its claims based on the preponderance of all of the evidence.

v. The Commission or Hearing Officer shall give effect to any rebuttable presumptions established by statute or other applicable law.

5. All hearings shall be conducted in the following order unless otherwise directed by the Commission or Hearing Officer or as provided for under the Alternative Means for Dispute Resolution requirements set forth in Rule 5:

a. Call to order and introductory remarks;

b. Presentation of any Stipulations or agreements between the Parties;

c. Opening statements by the Party or Parties upon whom the burden of proof rests;

d. Opening statements by all other Parties;

e. Presentation of case-in-chief by the Party upon whom burden of proof rests;

f. Presentations by all other Parties wishing to offer evidence, with the order of presentation to be determined by the Commission or Hearing Officer;

g. Rebuttal by the Party upon whom the burden of proof rests;

h. Closing statement by Party upon whom the burden of proof rests. Closing statements may be provided by written brief if the Commission or Hearing Officer determines it is warranted;

i. Closing statements by all other Parties. Closing statements may be provided by written brief if the Commission or Hearing Officer determines it is warranted;

j. At the conclusion of any witness's testimony, all other Parties may then cross-examine each witness. The order of the cross examination shall be determined by the person conducting the hearing. The Commission or Hearing Officer may examine any witness at any time.

6. No ex parte Communications with or by the Commission or Hearing Officer may occur during the pendency of any Adjudicatory Proceeding within the scope of the Ground Water Management Act. The Commission or Hearing Officer may, through formal communication with all Parties, request that certain information be provided to him or that certain tasks be performed.

7. Evidence

a. The rules of evidence and requirements of proof before the Commission shall conform, to the extent practicable, with the Colorado Rules of Evidence and the Colorado Rules of Civil Procedure. However, when necessary to do so, in order to ascertain facts affecting the substantial rights of the Parties to the proceedings, the Commission or Hearing Officer may receive and consider evidence not admissible under such rules if such evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. The Commission or Hearing Officer shall give effect to the rules of privilege recognized by law. Incompetent and unduly repetitious evidence may be excluded. Documentary evidence may be received in the form of a copy or excerpt if the original is

not readily available, but upon request, the Party shall be given an opportunity to compare the copy with the original. § 24-4-105(7), C.R.S.

b. Parties may make objections and all witnesses shall be subject to cross-examination. ~~Interested parties shall not be allowed to make objections and shall only be allowed to question witnesses at the discretion of the Commission or hearing officer. The Commission or hearing officer~~ The Commission or Hearing Officer may question any witness that testifies at the hearing and all witnesses shall also be subject to cross-examination by the Commission or ~~hearing officer.~~ Hearing Officer.

~~L.—In conducting adjudicatory hearings the Chairman of the Commission or hearing officer shall, in addition to the authority specified elsewhere, have authority to: administer oaths and affirmations; sign and issue subpoenas; regulate the course of the hearing; set the time and place for continued hearings; fix the time for the filing of appropriate documents; take depositions or have depositions taken; issue appropriate orders; take depositions or have depositions taken; issue appropriate orders that shall control the subsequent course of the proceedings; and take any other action authorized by statute or agency rule consistent with the APA.—~~

~~M.—~~

~~3-8.~~ The Commission or hearing officer Hearing Officer may allow ~~parties~~ Parties to submit evidence not previously submitted or disclosed under prehearing ~~conference~~ procedures for good cause ~~shown.~~

~~N.—~~

~~4-9.~~ The Commission or hearing officer Hearing Officer may permit ~~parties~~ Parties to submit motions not previously submitted under prehearing ~~conference~~ procedures for good cause ~~shown.~~

~~O.—~~

~~5-10.~~ The Commission or hearing officer Hearing Officer, after the receipt of the evidence, may allow or require ~~parties~~ Parties to present oral or written summations of the facts and the law, either at the hearing or subsequent thereto.—

~~P.—All parties~~

~~6-11.~~ Every Party shall have the right to present their case or defense by oral and documentary evidence. ~~Further, they~~ They shall also have the right to submit rebuttal evidence and conduct cross-examination as may be required for a full and true disclosure of the facts. Subject to these rights, where a hearing will be expedited and the interests of the ~~parties~~ Parties will not be substantially prejudiced, the Commission or Hearing Officer may receive all or part of the evidence in written form.— § 24-4-105(7), C.R.S.

~~Q.—The rules of evidence and requirements of proof shall conform, to the extent practicable, with those in civil non-jury cases in the district courts. However, when necessary to do so in order to ascertain facts affecting the substantial rights of the parties to the proceedings, the Commission or hearing officer may receive and consider evidence not admissible under such rules if such evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. The Commission or hearing officer shall give effect to the rules of privilege recognized by law. Incompetent and unduly repetitious evidence may be excluded. Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available, but upon request, the party shall be given an opportunity to compare the copy with the original.—~~

~~R.—The Commission or hearing officer~~

~~12.~~ The Commission or Hearing Officer may utilize their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented ~~and in doing so.~~ § 24-4-105(7), C.R.S.

~~7-13.~~ The Commission or Hearing Officer may take notice of general, technical, or scientific facts within their knowledge if the relevant fact noticed is specified in the record or brought to the attention of the ~~parties~~ Parties before a final decision (or ~~initial~~ Initial Decision of the Hearing Officer) and all Parties are afforded an opportunity to controvert the fact so noticed. § 24-4-105(8), C.R.S.

~~decision of the hearing officer). All parties shall be afforded an opportunity to controvert the fact so noticed.~~

~~S.—~~

~~8-14. Any partyParty, or the agent, servant, or employee of any partyParty, permitted or compelled to testify or submit data or evidence, shall be entitled to the benefit of legal counsel of his or her own choosing and at his or her own expense, but a personPerson may appear for himself, on their own behalf. An attorney who is a witness may not act as counsel for the partyParty calling him as a witness. Any person permitted or compelled to testify or to submit data or evidence shall be entitled to the benefit of legal counsel of his or her own choosing and, upon payment of— § 24-4-105(9)(a) reasonable charge may procure a copy of the transcript of his or her recorded testimony—), C.R.S.~~

~~T.—~~

~~15. The Commission or Hearing Officer shall cause the proceedings to be recorded by a reporter or by an electronic recording device. When requested, the Commission or Hearing Officer shall cause the proceedings, or any portion thereof, to be transcribed, the cost thereof to be paid by the Party requesting the transcription. Any party, upon payment of a reasonable charge therefor, shall be entitled to procure a copy of the transcript of the record, or any part thereof. If the Commission or Hearing Officer acquires a copy of the transcription, said copy shall be made available to any Party at a reasonable time for inspection and study. If a party obtains a copy of a transcript paid for by another party, the receiving party is required to contribute to the cost for preparation of the transcript. §§ 24-4-105(9)(a) and (13), C.R.S.~~

~~16. Prompt notice shall be given of the refusal to accept for filing or the denial in whole or in part of any written applications or other request made in connection with any adjudicatory hearing, with a statement of the grounds for such refusal or denial.~~

~~U.— The Commission or hearing officer shall cause the proceedings to be recorded by a reporter or by an electronic recording device. When requested, the Commission or hearing officer shall cause the proceedings, or any portion thereof, to be transcribed, the cost thereof to be paid by the party requesting the transcription. If the Commission acquires a copy of the transcription on its own accord a copy of the transcription shall be made available to any party at a reasonable time for inspection and study.~~

~~V.— Adjudicatory hearings before the Commission or hearing officer shall be conducted in the following order unless otherwise directed by the Commission or hearing officer, or unless as otherwise provided for by rule or statute:~~

~~1.— Call to order, introductory remarks, and action on applications for party status.~~

~~2.— Presentation of stipulations, proposed findings of fact, proposed conclusions of law, and/or any other matter that was addressed at the prehearing conference.~~

~~3.— Opening statement by the party upon whom the burden of proof rests, (if the party so desires).~~

~~4.— Opening statements by all other parties, (if the parties so desire).~~

~~5.— Presentation of the case in chief by the party upon whom burden of proof rests.~~

~~6.— Presentation by all other parties wishing to offer evidence, in the order to be determined by the Commission or hearing officer.~~

~~7.— Rebuttal by the party upon whom the burden of proof exists.~~

~~8.— Closing statement by party upon whom the burden of proof rests.~~

~~9.— Closing statements of all other parties.~~

~~10.— At the conclusion of any witness's testimony, or at the conclusion of the party's entire presentation, as may be determined by the Commission or hearing officer, all other parties may then cross-examine such witness or witnesses. The Commission or hearing officer shall determine the order of cross-examination.~~

~~11.— At the discretion of the Commission or hearing officer, any person who is not a formal party to the proceedings that desires to present testimony may do so by indicating his or her desire in writing no later than five (5) days prior to the hearing. A sign-up form will be available prior to and during the hearing. Voluntary testimony not specifically requested~~

~~per the written form may still be allowed. The parties shall be given an opportunity to respond to nonparty evidence in a manner deemed appropriate by the Commission or hearing officer to avoid prejudice.~~

~~12.— Briefs and memoranda of law filed by the participants shall be served upon the Commission, hearing officer and all parties at least ten (10) days prior to the hearing unless otherwise ordered.~~

~~W.— No ex parte communication with parties or their legal counsel by the Commission or hearing officer may occur during any pending adjudicatory proceeding. However, the Commission or hearing officer may request that certain information or tasks be provided or performed by requesting such via letter or pleading sent to all parties involved in the case.~~

~~X.— The Commission or hearing officer, after receipt of the evidence, may require parties to present oral or written summations of the facts and the law, or proposed findings of fact and conclusions of law, or both, either at the hearing or subsequent thereto, as deemed appropriate.~~

~~Y.— 17. In any case where the Hearing Officer has conducted the hearing, the Hearing Officer shall prepare and file an Initial Decision that shall be served upon each Party, except where all Parties with the consent of the Commission have expressly waived their right to have an Initial Decision rendered by the Hearing Officer.~~

~~18. These procedures may be modified by the Commission or hearing officer~~Hearing Officer if deemed necessary to affect the speedy resolution of the matter without prejudice to the participating ~~parties~~Parties before them.

**Rule 7—10 Requests ~~For~~ Administrative Hearings ~~Before The~~before the Commission ~~Under Section under § 37-90-114,~~  
C.R.S.**

~~A.— Requests Any person claiming to be injured within the boundaries of a designated groundwater basin by an act of the state engineer or the Commission under the provisions of the Management Act, or the failure of the state engineer or Commission to take any action under the provisions of the Management Act except as provided for small capacity wells in § 37-90-105, C.R.S., shall file a written petition with the Commission stating the basis of the alleged injury within 30 days of notice of such action. § 37-90-114, C.R.S. Only upon request by a petitioner and upon 35 days' written notice to any adverse party, the Commission shall conduct a hearing upon the petition pursuant to these rules and in the manner provided in § 37-90-113, C.R.S.~~

~~B. Filing of a written petitions and requests~~ for all hearings must be timely filed pursuant to these regulations and applicable statutory requirements.

~~B.— Requests~~C. Written petitions and requests for all hearings shall contain the following information:

- ~~1. 1.—~~ Identification of the person(s) or Agency requesting the hearing and the subject matter of the request.
- ~~2. 2.—~~ The legal, statutory, and regulatory authority forming the basis and authority for the request.
- ~~3. 3.—~~ The basis upon which the applicant believes the Commission or the ~~state engineer when acting as its executive director,~~ State Engineer has committed error with respect to the subject matter of the request.
- ~~4. 4.—~~ An estimate of the time that will be required for the hearing.

~~5.— Any person wishing to request a hearing on or claim injury from an order of the Commission or the State Engineer pursuant to section 37-90-114, C.R.S., shall file a written statement with the Commission setting forth the grounds for the request for hearing or claim of injury within thirty (30) days of receipt of the order.~~

~~6.— After receipt of such a request for hearing or claim of injury, the Commission shall conduct a hearing thereon pursuant to these rules and statutory authority.~~

**Rule 8—11 Notice Concerning Adjudicatory and Other Non-Rulemaking Hearings**

~~A.—~~ The Commission or ~~hearing officer~~Hearing Officer shall provide written notice of all adjudicatory and

other ~~non-rulemaking~~nonrulemaking hearings in accordance with ~~the requirements of this section~~§ 24-4-105 and § 37-90-112, C.R.S.

- B.— ~~\_\_\_\_\_~~ The Commission or ~~hearing officer~~Hearing Officer shall provide all ~~parties~~Parties, including petitioner(s), if applicable, timely notice of the time, place, nature of the hearing, ~~and the legal authority~~ and jurisdiction under which the hearing ~~willis to be conducted~~held, and the matters of fact and law asserted.
- C.— ~~\_\_\_\_\_~~ Unless otherwise provided by law, notice shall be served personally or by mailing by first-class mail to the last address furnished the Commission or ~~hearing officer~~Hearing Officer by the person to be notified, at least ~~twenty (20)~~30 days prior to the hearing. ~~\_\_~~
- D.— ~~\_\_\_\_\_~~ Due regard shall be given for the convenience and necessity of the ~~parties~~Parties and their representatives in fixing the time and place for all hearings, including the requirements set forth under ~~section~~§ 37-90-113, C.R.S.
- E.— ~~\_\_\_\_\_~~ A notice may contain requirements with respect to any special procedures, including requirements for written testimony as deemed appropriate concerning any particular adjudicatory matter.
- F.— ~~\_\_\_\_\_~~ An amended notice may be issued any time prior to the hearing without necessitating a continuance of the hearing date, provided the original notice is not substantially altered to the prejudice of any party. ~~\_\_~~ If an amendment is substantial and prejudicial, the hearing date shall be continued to an appropriate date as determined by the Commission or ~~hearing officer~~Hearing Officer.
- G.— ~~\_\_\_\_\_~~ The Commission or ~~hearing officer~~Hearing Officer may continue a hearing to another date by issuing written notice to that effect at any time prior to the close of the record, or by announcement at the date, time, and place of the original hearing.

#### **Rule ~~9-12~~ Party Status for Adjudicatory and Other Non-Rulemaking Hearings**

- A.— ~~\_\_\_\_\_~~ Any ~~person~~Person or Agency requesting an adjudicatory or other non-rulemaking hearing shall be granted ~~party~~Party status and need not file ~~an~~another application to be granted this status.
- B.— ~~\_\_\_\_\_~~ Any ~~person~~Person or Agency who may be affected or aggrieved by the Commission's or State Engineer's action shall be admitted as a ~~party~~Party to the proceeding upon filing a timely written request in accordance with the requirements of this ~~subsection~~section and in accordance with § 24-4-105, C.R.S., setting forth a brief and plain statement of the facts which entitle him or her to be admitted and the matters which he or she claims should be decided.
- C.— ~~Application to be made a party shall set forth a brief and plain statement of the reasons for seeking party status, including the facts that entitle admission and issues believed to be decided. The statement should contain a description of the general nature of the evidence to be presented in the course of the proceedings.~~
- D.— ~~\_\_\_\_\_~~ The Commission or ~~hearing officer~~Hearing Officer shall grant or deny ~~party~~Party status at the prehearing conference or other appropriate time prior to the hearing in a manner that does not prejudice other ~~parties~~Parties already participating in the proceedings.
- E.— ~~D.~~ Staff of the Commission shall automatically be a ~~party~~Party in all adjudicatory or other administrative proceedings. The attorney general shall represent staff.
- F.— ~~E.~~ Nothing in this subsection shall prevent the Commission or ~~hearing officer~~Hearing Officer from admitting any ~~person~~Person or Agency as a ~~party~~Party to any proceedings for limited purposes upon a showing of good cause.

#### **Rule ~~10-13~~ Final Agency Action for Adjudicatory and Other Non-Rulemaking Hearings Before the Commission**

- A.— ~~\_\_\_\_\_~~ The Commission or ~~hearing officer~~Hearing Officer shall proceed with reasonable dispatch to conclude any matter presented to it with due regard for the convenience of the ~~parties~~Parties or their representatives, giving precedence to rehearing proceedings after remand by court order.— § 24-4-105(10), C.R.S.
- B.— ~~\_\_\_\_\_~~ Hearings before the Commission and ~~initial decisions~~Initial Decisions by a ~~hearing officer~~Hearing Officer shall be based on the record. The record shall include: All pleadings, applications, evidence, exhibits and other papers presented or considered, matters officially noticed, ruling upon exceptions, any findings of fact and conclusions of law proposed by any partyParty, and any written ~~brief~~briefs filed.— § 24-4-105(14)(a), C.R.S.
- C.— ~~\_\_\_\_\_~~ In any case where the Commission has conducted the hearing, it shall prepare, file and serve upon each ~~party~~Party its decision. In any case where the hearing officerHearing Officer has conducted the hearing, the ~~hearing officer~~Hearing Officer shall prepare and file an ~~initial decision~~Initial Decision that shall be served upon each ~~party~~Party, except where all Parties with the consent of the Commission have expressly waived their right to have an Initial Decision rendered by the Hearing Officer. Each decision and ~~initial decision~~Initial Decision shall include a statement of findings and conclusions upon all the material issues of fact, law or discretion presented by the record and the appropriate order, sanction, relief, or denial thereof. ~~In the absence of an appeal to the Commission the initial decision of a hearing officer shall become the final decision of the Commission. In such case the evidence taken by the hearing officer need not be transcribed. Any appeal to the Commission from the initial decision of the hearing officer shall be taken by a party by filing exceptions within thirty (30) days after service of the initial decision of the hearing officer upon the parties, unless extended by the Commission, or a review upon motion by any member of the Commission within thirty (30) days after service of the initial decision of the hearing officer.~~— §24-4-105(14)(a), C.R.S.
- D.— ~~Any party who seeks to reverse or modify the initial decision of the hearing officer shall promptly file with the Commission a designation~~D. In the absence of an appeal to the Commission, the Initial Decision of a Hearing Officer shall become the final decision of the Commission. In such case, the evidence taken by the Hearing Officer need not be transcribed. Any appeal to the Commission of the Initial Decision of the Hearing Officer shall be taken by a party by filing exceptions within 30 days after service of the Initial Decision of the Hearing Officer upon the Parties, unless extended by the Commission, or unless review has been initiated upon motion by any member of the Commission within 30 days after service of the Initial Decision of the Hearing Officer. §§ 24-4-105(14)(a)(II) and 24-4-105(14)(b)(III), C.R.S.
- E.— Within 20 days following an Initial Decision of the Hearing Officer, any Party seeking to reverse or modify the Initial Decision of the Hearing Officer shall file with the Commission a designation of the relevant parts of the record and of the parts of transcript of the proceedings that shall be prepared and advance the cost therefore. Within ten days thereafter, any other partyParty or the Commission may also file a designation of additional parts of the transcript of the proceedings that are to be included and advance the cost therefore. A copy of this designation shall be served upon all parties. The transcript or the parts thereof which may be designated by the ~~parties~~Parties shall be prepared by ~~the~~a reporter or, in the case of an electronic recording device, ~~the agency conducting the hearing~~, and shall thereafter be filed with the Commission. No transcription is required if the Commission's review is limited to a pure question of law. The Commission may permit oral argument. The grounds of the decision shall be within the scope of the issues presented on the record. The record shall include all matters constituting the record upon which the decision of the hearing officerHearing Officer was based, the rulings upon the proposed findings and conclusions, the ~~initial decision~~Initial Decision of the ~~hearing officer~~Hearing Officer, and any other exceptions and ~~brief~~briefs filed. § 24-4-105(15)(a), C.R.S.
- E.—F. Unless the ~~hearing officer's~~Hearing Officer's findings of evidentiary fact are contrary to the weight of the evidence, those findings, as distinguished from ultimate conclusions of fact, shall not be set aside by the Commission on review of the ~~hearing officer's initial decision~~Hearing Officer's Initial Decision. The Commission may remand the case to the ~~hearing officer~~Hearing Officer for any further proceedings as they may direct, affirm, set aside, or modify, including any sanction or relief entered therein, in conformity with the facts and the law.— § 24-4-105(15)(b), C.R.S.

~~F.—G.~~ Each decision and ~~initial decision~~Initial Decision shall be served on ~~all parties by personal service or by mailing each Party~~ by first class ~~mail~~or in person, or via electronic means (upon agreement between the last address furnished to the Commission or hearing officer by each party, Parties) and shall be effective as to such party on the date mailed or such later date as is stated in the decision.— § 24-4-105(16)(a), C.R.S.

~~G.—H.~~ Upon application by a Party, and prior to the expiration of the time allowed for commencing an action for judicial review, the Commission may change the effective date of a decision or Initial Decision. § 24-4-105(16)(b), C.R.S.

I. A party seeking judicial review of Commission action may apply to the Commission to postpone the implementation date of the agency action. The Commission, upon a finding that irreparable injury would otherwise result, shall postpone the ~~implementation effective~~ date of the action pending judicial review. Postponement of the implementation date of an action does not stay the time for seeking judicial review and does not constitute Commission agreement to grant a hearing, rehearing or reconsideration.— § 24-4-106(5), C.R.S.

#### **Rule ~~11-14~~ Reconsideration**

~~A.—~~ During the time permitted for seeking judicial review of any final order rendered by the ~~Commission~~ or ~~hearing officer~~Hearing Officer in any adjudicatory or other administrative hearing, any ~~party~~Party affected or aggrieved by such order or determination may apply to the Commission or ~~hearing officer~~Hearing Officer for a rehearing with respect to, or reconsideration of, such order or determination. The determination by the Commission or ~~hearing officer~~Hearing Officer whether to grant or deny the application for a rehearing, or reconsideration shall be made within 10 days after receipt by the ~~hearing officer~~Commission or Hearing Officer of such application. Determinations by the Commission as a body whether to grant or deny the application for a rehearing, or reconsideration shall be made at the next regularly scheduled Commission meeting.—

~~B.—~~ If the application for a rehearing or reconsideration is granted, the order or determination to which such application pertains shall not be considered final for purposes of judicial review and the Commission or ~~hearing officer~~Hearing Officer may affirm, reverse, or modify, in whole or in part, the pertinent order or determination. Thereafter, such order or determination shall be final and not subject to reconsideration under this section.

~~C.—~~ If the application before the Commission (an ~~initial decision~~Initial Decision of the ~~hearing officer~~Hearing Officer is not included herein) for a rehearing or reconsideration is denied, the applicable order or determination shall be considered final agency action as of the date the denial is originally signed or indicated in the relevant decision under application for reconsideration. An application under this section extends the time period for seeking judicial review of the original order or determination only for the number of days that it is pending, since such an application merely stays the time period for seeking judicial review.

~~D.—~~ Applications for reconsideration by the ~~hearing officer~~Hearing Officer shall stay the time for running an appeal to the Commission only by the number of days that it is pending. Applications for re-hearing or reconsideration filed with the ~~hearing officer~~Hearing Officer must be filed within 10 days of the ~~hearing officer's initial decision~~Hearing Officer's Initial Decision and the ~~hearing officer~~Hearing Officer must file a written decision concerning such reconsideration within 10 days of receipt of its filing.

~~E.—~~ The decision to grant or deny a rehearing or reconsideration pursuant to this section is not subject to judicial review.

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~~Editor's Notes~~  
~~History~~